
A BILL FOR AN ACT

RELATING TO TRANSPORTATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the economic,
2 social, and environmental well-being of the state and the
3 maintenance of a high quality of life for the people of the
4 state require an efficient transportation system.

5 The ability of the State to provide an efficient
6 transportation system can be enhanced by a public-private sector
7 program providing for private entities to undertake all or a
8 portion of the study, planning, design, development, financing,
9 acquisition, installation, construction, improvement, operation,
10 or maintenance of transportation systems and facility projects.
11 This public-private program will provide benefits to both the
12 public and private sectors. Public-private initiatives provide
13 a sound economic investment opportunity for the private sector.
14 Such initiatives provide the State with increased options to
15 develop the state's infrastructure and can supplement state
16 transportation revenues.

17 This Act is intended to achieve the following goals through
18 public-private partnerships:



- 1 (1) Provide a well-defined mechanism to facilitate the
2 collaboration and creative cost and risk sharing in
3 transportation projects between public and private
4 partners;
- 5 (2) Bring innovative thinking from the private sector to
6 bear on transportation needs within the state and
7 access specialized development, financing, design,
8 construction management, operations, management
9 services and techniques available in the private
10 sector;
- 11 (3) Reduce the public cost of project delivery and
12 services for eligible facilities;
- 13 (4) Expedite project delivery;
- 14 (5) Encourage private investment in public infrastructure;
- 15 (6) Use funding sources, where financially advantageous
16 and in the public interest;
- 17 (7) Encourage life cycle efficiencies in transportation
18 projects;
- 19 (8) Foster flexibility in procurement to provide the best
20 value to the State for eligible facilities under this
21 Act;



- 1 (9) Provide better use and leverage of public resources
2 and savings to taxpayers, by increasing private
3 investment in public facilities and enhancing capital
4 formation for large projects;
- 5 (10) Develop eligible facilities with the cooperation,
6 consultation, and support of affected communities and
7 county jurisdictions;
- 8 (11) Solicit, evaluate, negotiate, and administer public-
9 private agreements with the private sector relating to
10 the planning, financing, development, design,
11 construction, upgrading, reconstruction, operation or
12 maintenance of transportation systems and facilities;
13 and
- 14 (12) Obtain assistance in the development of these
15 transportation systems and facilities from federal
16 programs administered by the United States Department
17 of Transportation.

18 The legislature intends that the powers granted to the
19 state department of transportation and other agencies in this
20 Act are in addition to any other powers authorized under
21 applicable law.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 PUBLIC-PRIVATE PARTNERSHIP IN TRANSPORTATION

6 § -1 Definitions. Whenever used in this chapter, unless
7 the context otherwise requires:

8 "Department" means the state department of transportation.

9 "Eligible facility" means any facility developed, operated
10 or held in accordance with this chapter, including any existing,
11 enhanced, upgraded, or new facility used or useful for the safe
12 transport of people or goods via one or more modes of transport,
13 whether involving highways, boats, vessels, inter-modal or
14 multi-modal systems, or any other mode of transport, as well as
15 facilities, structures, parking, rail yards or storage
16 facilities, vehicles, rolling stock, or other equipment, items
17 or property related thereto.

18 "Private partner" means a person, entity, or organization
19 that is not the federal government, the State, a county, or a
20 unit of government.

21 "Public-private partnership agreement" means any binding
22 agreement transferring rights for the use or control, in whole



1 or in part, of an eligible facility by the department or other
2 unit of government to a private partner in accordance with this
3 chapter.

4 "Public-private partnerships in transportation program" or
5 "program" means the program as provided in this chapter.

6 "Unit of government" means any department or agency of the
7 State, any public corporation established under state law or
8 county ordinance, or any intergovernmental agency or
9 corporation.

10 § -2 **Rules.** The department shall adopt, amend, or
11 repeal rules as it determines necessary to effectuate this
12 chapter. The rules adopted pursuant to chapter 91 shall have
13 the force and effect of law.

14 § -3 **Project delivery methods.** The department may
15 provide for the development or operation of eligible facilities
16 using a variety of project delivery methods and forms of
17 agreement. Such methods may include a wide range of
18 possibilities, including without limitation:

- 19 (1) Predevelopment agreements leading to other
20 implementing agreements;
21 (2) A design-build agreement;
22 (3) A design-build-maintain agreement;



- 1 (4) A design-build-finance-operate agreement;
- 2 (5) A design-build-operate-maintain agreement;
- 3 (6) An agreement providing for the private partner to
- 4 design, build, operate, maintain, manage or lease an
- 5 existing, enhanced, upgraded, or new facility;
- 6 (7) Such other project delivery method or agreement or
- 7 combination of methods or agreements as in the
- 8 determination of the department will serve the public
- 9 interest.

10 § -4 Procurement. (a) The department shall procure
11 services under this chapter using any of the following:

- 12 (1) Calls for project proposals;
- 13 (2) Solicitations using, without limitation, requests for
- 14 qualifications, short-listing of qualified proposers,
- 15 requests for proposals, negotiations, best and final
- 16 offers or other procurement procedures;
- 17 (3) Unsolicited proposals; provided that if the department
- 18 determines there is sufficient merit to pursue any
- 19 unsolicited proposal, the department shall provide
- 20 reasonable opportunity for other entities to submit
- 21 competing proposals;



1 (4) Request for proposals from the private sector for
2 development and finance plans most suitable for the
3 project;

4 (5) Best value selection request for proposals based upon
5 price financial proposals, or other factors; or

6 (6) Such other procedures as the department determines may
7 further the intent of this chapter.

8 (b) When the department issues a request for
9 qualifications, request for proposals, or similar solicitation
10 document, the request shall generally set forth the factors and
11 the manner in which responses will be evaluated.

12 (c) In evaluating proposals, the department may accord
13 such relative weight to factors such as cost; financial
14 commitment; innovative financing; technical, scientific,
15 technological, or socio-economic merit; and other factors as the
16 department deems appropriate to obtain the best value for the
17 State.

18 (d) The department may charge a reasonable administrative
19 fee for the evaluation of an unsolicited project proposal.

20 (e) The department may procure services, award agreements,
21 administer revenues, and generate exemptions as authorized in
22 this chapter notwithstanding any requirements of other state law



1 or rule or county ordinance or rule relating to public bidding
2 or other procurement procedures or other provisions otherwise
3 applicable to public works, services, or utilities.

4 (f) The department may retain financial, legal, and other
5 consultants and experts to assist in the evaluation,
6 negotiation, and development of eligible facilities under this
7 chapter.

8 (g) The department may spend such moneys as may be
9 reasonably necessary for the development and evaluation of
10 concepts or proposals, negotiation of agreements, and
11 implementation of agreements for the development or operation of
12 eligible facilities under this chapter.

13 **§ -5 Posting of conceptual proposals; public comment;**
14 **public access to procurement records.** (a) Conceptual proposals
15 submitted in accordance with this chapter to a unit of
16 government shall be posted by the responsible unit of government
17 within thirty working days after acceptance of the proposals as
18 follows:

19 (1) For state agencies, posting shall be on the department
20 of accounting and general services' website; and

21 (2) For any other units of government, posting shall be on
22 the responsible unit of the government's website or by



1 publication in a newspaper of general circulation in
2 the county in which the contract is to be performed,
3 of a summary of the proposals and the location where
4 copies of the proposals are available for public
5 inspection. Posting may also be on the department of
6 accounting and general services' website in the
7 discretion of the responsible unit of government.

8 In addition to the posting requirements, at least one copy
9 of the proposals shall be made available for public inspection.
10 Nothing in this section shall be construed to prohibit the
11 posting of the conceptual proposals by additional means so as to
12 provide maximum notice to the public of the opportunity to
13 inspect the proposals. Trade secrets, financial records, or
14 other private records shall be withheld from public disclosure
15 to the extent permitted by chapter 92F, except as otherwise
16 agreed to by the responsible public entity and private entity
17 submitting the proposal.

18 (b) In addition to the posting requirements of subsection
19 (a), for thirty days prior to entering into an interim or
20 comprehensive agreement, the responsible unit of government
21 shall provide an opportunity for public comment on the
22 proposals. The public comment period required by this



1 subsection may include a public hearing in the sole discretion
2 of the responsible public entity. After the end of the public
3 comment period, no additional posting shall be required.

4 (c) Once an interim agreement or a comprehensive agreement
5 has been entered into and the process of bargaining of other
6 interim agreements related to the qualifying transportation
7 facility or the process of bargaining of all phases or aspects
8 of the comprehensive agreement is complete, the responsible unit
9 of government shall make procurement records available for
10 public inspection, upon request. For the purposes of this
11 subsection, procurement records shall not be interpreted to
12 include trade secrets or confidential information which may be
13 withheld from public disclosure under chapter 92F.

14 (d) This section shall apply to accepted proposals
15 regardless of whether the process of bargaining will result in
16 an interim or a comprehensive agreement.

17 (e) A responsible unit of government and any independent
18 review panel appointed to review information and advise the
19 responsible unit of government may hold closed meetings to
20 discuss or consider records exempt from disclosure; provided the
21 meetings are held in accordance with the procedural requirements
22 of section 92-5.



1 § -6 **Public-private partnership agreements.** (a) In any
2 public-private partnership agreement for any eligible facility
3 under this chapter, the department may:

4 (1) Authorize the private partner to collect user fees,
5 tolls, fares, or similar charges, including, without
6 limitation, provisions:

7 (A) Specifying the technology to be used in the
8 facility;

9 (B) Establishing circumstances under which the
10 department may receive a share of revenues from
11 such charges; and

12 (C) Governing enforcement of tolls, including use of
13 cameras or other mechanisms to ensure that users
14 pay tolls that are due, and allowing the private
15 partner access to relevant state and county
16 databases to the extent necessary to collect and
17 enforce tolls;

18 (2) Allow for payments to be made by the State to the
19 private partner, including but not limited to
20 availability payments or performance-based payments;

21 (3) Allow the department to accept payments of money and
22 share revenues with the private partner;



- 1 (4) Address the method of sharing risk management and
2 insurance for the project;
- 3 (5) Specify the method of sharing the costs of development
4 of the project;
- 5 (6) Allocate financial responsibility for cost overruns;
- 6 (7) Establish the damages to be assessed for
7 nonperformance;
- 8 (8) Establish performance criteria, incentives, or both;
- 9 (9) Address the acquisition of rights-of-way and other
10 property interests that may be required, including
11 provisions addressing the exercise of eminent domain;
- 12 (10) Establish recordkeeping, accounting, and auditing
13 standards to be used for the project;
- 14 (11) For a project that reverts to public ownership,
15 address responsibility for reconstruction or
16 renovations required for a facility to meet all
17 applicable government standards upon reversion of the
18 facility to public ownership;
- 19 (12) Provide for patrolling and law enforcement on public
20 facilities;
- 21 (13) Identify any department specifications that must be
22 satisfied, including allowing the private partner to



1 request and receive authorization to deviate from such
2 specifications on making a showing of need
3 satisfactory to the department;

4 (14) Require a private partner to provide performance and
5 payment bonds, parent company guarantees, letters of
6 credit, and other acceptable forms of security, the
7 penal sum or amount of which may be less than one
8 hundred per cent of the value of the contract involved
9 based upon the department's determination, made on a
10 facility-by-facility basis, of what is required to
11 adequately protect the State;

12 (15) Authorize the private partner in a partnership
13 agreement under this chapter to collect user fees,
14 tolls, fares, or similar charges to cover its costs
15 and provide for a reasonable rate of return on the
16 private partner's investment, including, without
17 limitation, the following provisions:

18 (A) That the charges may be collected directly by the
19 private partner or by a third party engaged for
20 that purpose;



- 1 (B) A formula for the adjustment of user fees, tolls,
2 fares, or similar charges during the term of the
3 agreement;
- 4 (C) For an agreement that does not include such a
5 formula, provisions regulating the private
6 partner's return on investment; or
- 7 (D) A list of variety of traffic management
8 strategies, including without limitation:
- 9 (i) General purpose toll lanes;
- 10 (ii) High occupancy vehicle lanes where single or
11 low occupancy vehicles may "buy-in" to use
12 higher occupancy vehicle lanes by paying a
13 toll;
- 14 (iii) Lanes or facilities where the tolls may vary
15 during the course of the day or week or
16 according to levels of congestion
17 anticipated or experienced; or
- 18 (iv) Such combinations of, or variations on, the
19 foregoing, or other strategies, as the
20 department may determine appropriate on a
21 facility-by-facility basis;
- 22 or



1 (16) Specifying remedies available and dispute resolution
2 procedures, including but not limited to the right of
3 the private partner to institute legal proceedings to
4 obtain an enforceable judgment or award against the
5 department in the event of a default by the
6 department, and procedures for use of dispute review
7 boards, mediation, facilitated negotiation,
8 arbitration, and other alternative dispute resolution
9 procedures.

10 (b) The department may enter into agreements with any
11 private partner which includes provisions as described in
12 section -6(a) notwithstanding any other provision of state law
13 or rule or county ordinance or rule.

14 (c) With the prior approval of the governor,
15 notwithstanding any other provision of state law or rule, an
16 agreement under this chapter may exempt activities of a private
17 partner directly related to, or income directly derived from,
18 property developed, operated, or held by a private partner under
19 a partnership agreement pursuant to this chapter from any and
20 all taxes under Title 14, for a period not to exceed ten years
21 from the date of execution of the partnership agreement.



1 § -7 **Fines; toll evaders.** The department shall adopt
2 rules in accordance with chapter 91 to establish fines for any
3 motorist who violates this chapter by evading the payment of an
4 appropriate levied toll on any toll highway built, operated,
5 owned, or financed under this chapter.

6 § -8 **Police powers; violations of law.** (a) All police
7 officers and other law enforcement officers having police powers
8 of the State and of each affected county shall have the same
9 powers and jurisdiction within the limits of the qualifying
10 transportation facility that they have in their respective areas
11 of jurisdiction, and these officers shall have access to the
12 qualifying transportation facility at any time for the purpose
13 of exercising their powers and jurisdiction. This authority
14 does not extend to the private offices, buildings, garages, and
15 other improvements of the private entity to any greater degree
16 than the police power extends to any other private buildings and
17 improvements.

18 (b) To the extent the transportation facility is a road,
19 bridge, tunnel, overpass, or similar transportation facility for
20 motor vehicles, the traffic and motor vehicle laws of the State
21 or, if applicable, any county jurisdiction shall be the same as
22 those applying to conduct on similar transportation facilities



1 in the state or a county. Punishment for offenses shall be as
2 prescribed by law for conduct occurring on similar
3 transportation facilities in the state or a county.

4 **§ -9 Funding and financing.** (a) The department may, in
5 connection with providing for the development or operation of an
6 eligible facility, allow funding from any lawful source,
7 including without limitation:

- 8 (1) The proceeds of grant anticipation revenue bonds
9 authorized by 23 United States Code Section 122 or any
10 other applicable federal or state law;
- 11 (2) Grants, loans, loan guarantees, lines of credit,
12 revolving lines of credit, or other arrangements
13 available under the Transportation Infrastructure
14 Finance and Innovation Act under 23 United States Code
15 Section 181 or any other federal or state law;
- 16 (3) Federal, state, or county revenues;
- 17 (4) User fees, tolls, fares, charges, lease proceeds,
18 rents, availability payments, gross or net receipts
19 from sales, proceeds from the sale of development
20 rights, franchise fees, permit fees, or any other
21 lawful form of consideration;



1 (5) Private activity bonds as described by 26 United
2 States Code Section 142(a)(15) and other forms of
3 private capital; and

4 (6) Such other forms of public and private capital as may
5 be available.

6 (b) As security for the payment of financing described in
7 this section, the revenues from the project may be pledged, but
8 no such pledge of revenues shall constitute in any manner or to
9 any extent a general obligation of the State or any county. Any
10 financing may be structured on a senior, parity, or subordinate
11 basis to any other financing.

12 (c) The department, and another unit of government
13 authorized by the department, may issue toll revenue bonds to
14 provide funds for any project under this chapter.

15 (d) The department may accept from the United States or
16 any of its agencies such funds as are available to this State or
17 to any other unit of government for carrying out the purposes of
18 this chapter, whether the funds are made available by grant,
19 loan, or other financing arrangement. The department may enter
20 into such agreements and other arrangements with the United
21 States or any of its agencies as may be necessary, proper, and
22 convenient for carrying out the purposes of this chapter.



1 (e) The department may accept from any source any grant,
 2 donation, gift, or other form of conveyance of land, money,
 3 other real or personal property, or other valuable thing made to
 4 the State, the department, or another unit of government for
 5 carrying out the purposes of this chapter.

6 (f) Any eligible facility may be funded in whole or in
 7 part by contribution of any funds or property made by any
 8 private entity or public sector partner that is a party to any
 9 agreement entered into under this chapter.

10 (g) Federal, state, and county funds may be combined with
 11 any private sector funds for any project purposes,
 12 notwithstanding any other provision of state law or rule or
 13 county ordinance or rule.

14 § -10 **Confidentiality and public disclosure.** A proposer
 15 shall identify those portions of a proposal or other submission
 16 that the proposer considers to be trade secrets or confidential
 17 commercial, financial, or proprietary information. The
 18 identified information shall be withheld from public disclosure
 19 to the extent permitted by chapter 92F.

20 § -11 **Federal laws.** If no federal funds are used on an
 21 eligible facility, the laws of this State, including this
 22 chapter, shall govern. Notwithstanding any provisions of this



1 chapter, if federal funds are used on an eligible facility and
2 applicable federal statutes or regulations conflict with this
3 chapter or require provisions or procedures inconsistent with
4 this chapter, the applicable federal statutes or regulations
5 shall govern."

6 SECTION 3. This Act shall take effect upon its approval.



Report Title:

Public Private Partnership; Toll roads.

Description:

Allows State to enter into agreements with private entities to build, operate, own, or finance transportation facilities including toll highways. (HB70 HD1)

